

**IN THE UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

KATHY McCORNACK, et al.;

Plaintiffs,

v.

ACTAVIS TOTOWA, LLC, et al..

Defendants.

THIS DOCUMENT RELATES TO:

**Case No. 2:09-cv-0671 and
MDL Case No: 2:08-md-1968**

**APPLICATION TO APPEAR TELEPHONICALLY AT NOVEMBER 17, 2010
DOCKET CONFERENCE; AND DECLARATION OF DON A. ERNST IN SUPPORT**

Plaintiffs' attorney Don A. Ernst seeks permission to have him or one of his associates appear telephonically at the Docket Conference scheduled in the above referenced matter on November 17, 2010 at 9:00 a.m. because Mr. Ernst has a scheduling conflict in that he will be in trial as lead trial counsel on a class action matter for two weeks or more, including on November 17, 2010. The other case is entitled *Stephens v. American Equity Investment Life Insurance Company, Estate Planning & Investments, Inc.*, case number CV 040965, and it has been pending in the Superior Court of California, County of San Luis Obispo, since November 12, 2004. (Ernst Decl. at ¶2.)

Local Rule 78.1 permits an attorney to appear telephonically with Court approval. Mr. Ernst seeks such approval here. If such approval is given Mr. Ernst will make a diligent effort to be on the phone at the designated time. However, if the hearing is delayed or overlaps with the trial on November 17, 2010 Mr. Ernst requests that the Court permit one of his associates to appear on his behalf. The associate will be fully familiar with the facts of the case and Mr. Ernst's schedule. Alternatively, Mr. Ernst requests that his appearance be excused upon his filing a detailed declaration outlining his availability and preferred trial schedule.

If permission to appear telephonically is granted, Mr. Ernst will make arrangements with the Court clerk to work out a procedure, either through Court Call or other court-preferred method.

DATED: October 27, 2010

/s/ Don E. Ernst
Don A. Ernst (CA. SBN 065726)
Attorneys for Plaintiffs
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DECLARATION OF DON A. ERNST

I, DON A. ERNST, declare:

1. I am an attorney authorized to practice law in the United States District Court for the Southern District of West Virginia and licensed to practice law in the courts of the State of California. I am a principal at Ernst & Mattison and represent Plaintiffs Kathy McCornack, Daniel McCornack, and Ralph McCornack in the above captioned litigation. The following facts are

based upon my personal knowledge and review of the file, and if called upon to testify, I would and could testify to the matters herein.

2. I have a scheduling conflict in that I am lead trial counsel on a class action matter for two weeks or more, including on November 17, 2010. The case is entitled *Stephens v. American Equity Investment Life Insurance Company, Estate Planning & Investments, Inc.*, case number CV 040965, which has been pending in the Superior Court of California, County of San Luis Obispo, since November 12, 2004.

I declare under penalty of perjury pursuant to the laws of the State of West Virginia that the foregoing is true and correct and that this Declaration was signed on October 27, 2010 in San Luis Obispo, California.

DATED: October 27, 2010

/s/ Don E. Ernst
Don A. Ernst (CA. SBN 065726)
Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2010, I or an employee under my control electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

DATED: October 28, 2010

/s/ Don E. Ernst
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